

MCI's proposal would not provide any guidance as to whether a competing carrier is predominantly facilities-based under Section 271(c)(1)(A), and would be unstable in application.

COMMISSION CONCLUSION

The words "their own" refer to the facilities owned by the competing providers. This is the plain meaning of Section 271 (c)(1)(A). Leased facilities do not qualify as "their own" facilities. If Congress meant to include leased facilities, it would have stated so. There is no ambiguity present with respect to this language and, therefore, there is no need to look any deeper than the words of this Section.

The Commission agrees with Staff that "predominantly" should be interpreted to mean greater than 50%. That approach not only gives a common sense meaning to the word "predominantly," but also interprets that term in a manner which acknowledges the alternative standard Congress included in the statute -- exclusively.

The Commission also agrees with Staff that the proper measure for determining whether a carrier is predominantly facilities-based is using a relative-LRSIC analysis. Thus, for a carrier serving customers over its own facilities, unbundled loops, and resale, a weighted average based on the percent of the carrier's own facilities should be calculated. If the weighted average exceeds 50 percent, then the carrier is deemed serving customers predominantly over its own facilities.

However, due to insufficient information, we must rely on the information that Ameritech submitted regarding the embedded investment dollars of central office cable, wired loop investment, and other facilities-based investment. We accept Staff's analysis as reasonable and, thus, also conclude that CCT is serving customers predominantly over its own facilities. We agree with Staff that a determination with respect to MFS cannot be made in this record.

F. AMERITECH'S RELIANCE ON OTHER AGREEMENTS THROUGH MOST FAVORED NATIONS CLAUSES

Ameritech contends that its interconnection agreements with CCT, MFS and TCG each contain a "most favored nation" ("MFN") clause. It notes that pursuant to those MFN clauses, CCT, MFS and TCG — and any other carrier with an interconnection agreement — may order individual network elements or checklist items out of Ameritech's approved interconnection agreement with AT&T ("AT&T Agreement"). Ameritech states that the AT&T Agreement makes available all of the checklist items. It stresses that the Commission expressly has found that all of the rates, terms and conditions contained in the AT&T Agreement fully comply with Sections 251 and 252(d), and with the FCC's Regulations. Accordingly, Ameritech maintains that CCT, MFS and TCG have available to them all of the checklist items for immediate order, on rates, terms and conditions that fully comport with the Act. Ameritech adds that the rates, terms and conditions contained in its interconnection agreements with CCT, MFS and TCG fully comply with Sections 251 and 252(d). However, it notes that it would not matter even if that were not the case, because these carriers may order unbundled loops, or any other checklist item, out of the AT&T Agreement.

Staff refers to Ameritech's attempt to rely on other agreements through MFN clauses as an attempt to do indirectly what the 1996 Act prohibits on a direct basis. It states that this reliance on the AT&T Agreement is nothing more than a Track B approach in disguise. Staff maintains that

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Ameritech has not met the requirements to proceed under Track B. It further notes that with the language of Section 271(c)(1)(B) -- the Track B approach -- Congress allowed for the possibility of interLATA relief in situations where the BOC is offering only access and interconnection. Staff contends, however, that this "possibility" is subject to specific requirements which represent Congress' judgment as to the proper balancing of the diverse if not competing interest of BOCs, long distance companies and consumers. Staff argues that Ameritech has not demonstrated that it meets those requirements.

Staff further notes that MFN clauses are akin to the statutory requirement in Section 252(i) that ILECs make approved agreements available to all carriers. 47 U.S.C. §252(i). It contends that if Congress intended to allow BOCs to rely on the availability of other agreements to satisfy the conditions of Section 271(c)(1)(A), it would have provided for that potentiality. Staff maintains that, notwithstanding Congress' creation of a legislative MFN clause in Section 252(i), Congress specifically required in Section 271(c)(1)(A) that a BOC establish that it has entered into one or more agreements specifying the terms and conditions under which it is providing access and interconnection. Staff further stresses that Congress provided in Section 271(c)(2)(A) that the checklist requirements of Section 271(c)(2)(B) must be met by the access and interconnection which the BOC is providing pursuant to its agreements with facilities-based carriers serving business and residential carriers as required under Section 271(c)(1)(A). Staff states that if Congress had intended to allow BOCs to rely on the terms and conditions of other agreements, it would have specified otherwise.

COMMISSION CONCLUSION

There is simply nothing wrong with the incorporation by reference of items from other contracts. This is what the MFN clause accomplishes. Incorporation by reference is sufficient from a contract law standpoint and, therefore, it is sufficient for the Commission. Pursuant to those MFN clauses, CCT, MFS and TCG may order individual network elements or checklist items out of Ameritech's approved interconnection agreement with AT&T or any other approved agreement. The AT&T Agreement includes all of the checklist items. In addition, this Commission has expressly found that all of the rates, terms and conditions contained in the AT&T Agreement fully comply with Sections 251 and 252(d), and with the FCC's Regulations.

G. RELIANCE ON SGAT

Staff argues that the Company SGAT is not part of the record evidence and should not be relied on for purposes of determining Ameritech's compliance with the checklist items. Furthermore, Staff takes the position that subparagraphs (A) and (B) of Section 271(c)(1) represent separate and distinct alternatives which it argues cannot be combined. It cites Paragraph 1 of Section 271(c) which specifies that a BOC must "meet the requirements of subparagraph (A) or subparagraph (B) of this paragraph for each State for which the authorization is sought." 47 U.S.C. §271(c)(1) (emphasis added). Staff argues that in construing a statute, courts generally construe statutory requirements written in the disjunctive as setting out separate and distinct alternatives. Citing U.S. v. Behnezhad, 907 F.2d 896 (9th Cir. 1990).

Staff contends that the language of Section 271(c)(1) -- including subparagraphs (A) and (B) -- clearly establishes that the requirements in subparagraphs (A) and (B) were intended to be, and in fact do represent, separate and distinct alternatives. Staff states that in addition to the "or" in Section 271(c)(1), the language in subparagraph (B) clearly indicates that the requirements of subparagraph (B) come into play only "if . . . no such provider [described in subparagraph (A)] has requested the access and interconnection described in subparagraph (A)" 47 U.S.C. §271(c)(1)(B).

Ameritech maintains that if the Commission were to assume that "provide" means "actually furnish" and not "make available," there must be some Track B outlet for it in the event that competing carriers do not order certain checklist items. However, Ameritech contends that Staff's legal theory does not accomplish that result. Among other things, it notes that Staff's theory rests upon a crucial, but false premise: that Ameritech's interconnection agreements have implementation schedules requiring competing carriers actually to order all of the checklist items made available in the agreements.

In fact, Ameritech states that its interconnection agreements with CCT, MFS, TCG and AT&T contain implementation schedules only for interconnection, and not for any of the other 13 checklist items. See CCT Agreement, Sched. 3.0; MFS Agreement, Sched. 3.0; TCG Agreement, Sched. 3.0; AT&T Agreement, Sched. 2.1. Moreover, these competing carriers are not, in fact, actually required to interconnect with Ameritech by the date set forth in their implementation schedules. Thus, according to Ameritech, no competing carrier has committed to purchase checklist items; the interconnection agreements only require Ameritech to furnish products, services and network elements when and if the competing carriers ask to purchase them. It follows, then, that the "Track B outlet" theory articulated by Staff, does not relieve the quandary caused by Staff's stringent interpretation of the term "provide." For example, Staff's theory would not succeed in creating a Track B option for Ameritech in the event that no carrier chooses to take ULS, because the relevant implementation schedules do not commit competing carriers to purchase that checklist item.

Ameritech puts forth an alternative analysis of Section 271(c)(1)(B). It maintains that if Section 271(c)(1)(B) entitles a BOC to Track B relief under circumstances where Section 271(c)(1)(A) carriers do not order checklist items they have committed to purchase in their implementation schedules, then, a fortiori, the same should be true where competing carriers do not commit at all to purchase certain checklist items. More specifically, to the extent that Ameritech's Section 271(c)(1)(A) competitors do not order certain checklist items and are not required to do so by their implementation schedules, Ameritech may satisfy those checklist items through its SGAT.

Accordingly, Ameritech concludes that if the Commission accepts Staff's view that "provide" means only "actually furnish," It would be entitled to pursue interLATA relief via the foregoing exception in Section 271(c)(1)(B). First, Ameritech contends that it actually furnishes several checklist items to its Section 271(c)(1)(A) competitive carriers in compliance with the competitive checklist. Second, it states that its SGAT generally offers the checklist items that no Section 271(c)(1)(A) competitor has ordered or committed to order. Accordingly, Ameritech argues that pursuant to the exception set forth in Section 271(c)(1)(B), it qualifies for interLATA relief.

Sprint and MCI agree with Staff that Ameritech cannot use an SGAT intended for Track

B entrance to meet the requirements of the competitive checklist.

Commission Conclusion

Tracks A and B are two separate and distinct alternatives which cannot be combined. Ameritech fails to cite any legal authority for the proposition that they can be combined. The language of Section 271 is clear that no such option is provided. Accordingly, Ameritech's arguments to this effect which do not include any legal authority are rejected.

V. AMERITECH ILLINOIS' COMPLIANCE WITH THE "COMPETITIVE CHECKLIST"

A. INTRODUCTION

As previously stated in this Order, Section 271(d)(2)(B) directs the FCC, before making a final determination on a BOC's Section 271 application, to "consult" with the relevant state Commission "in order to verify the compliance of the [BOC] with the requirements of subsection (c)." The standards applicable to whether a particular checklist item is being provided are set forth in Section II. C. of this Order.

B. PROVISION OF INDIVIDUAL CHECKLIST ITEMS

1. Interconnection

Checklist item (i) requires Ameritech to provide interconnection in accordance with the requirements of Sections 251(c)(2) and 252(d)(1). 47 U.S.C. §271(c)(2)(B)(i). Pursuant to Section 251(d)(1), the FCC entered its Interconnection Order on August 8, 1996 setting forth the rules and regulations implementing Section 251(c). State commissions are charged with the duty to implement Section 251(c), Section 252(d), and the FCC Interconnection Order under Sections 252(b)(4)(C), 252(c), 252(d) and 252(e). The Commission agrees with Staff that in order to determine whether Ameritech has met the interconnection component of the Checklist, Staff recommends that the Commission consider the requirements of Sections 251(c) and 252(d), the FCC Interconnection Order and the Commission's own prior Orders implementing these provisions. Staff Ex. 4.01, at 3.

The FCC Order requires that incumbent LECs offer the following methods of interconnection: 1) physical collocation or virtual collocation; 2) meet point interconnection arrangements; and 3) any other technically feasible methods. Section 51.321(b) of the Code of Federal Regulations ("CFR").

In addition, the FCC requires that incumbent LECs provide interconnection to requesting carriers:

- (i) for the transmission and routing of telephone exchange traffic, exchange access traffic, or both;
- (ii) at any technically feasible point including, at a minimum: a) the line-side of a local switch; b) the trunk-side of a local switch; c) the trunk

interconnection points for a tandem switch; d) out-of-band signaling transfer points necessary to exchange traffic at these points and access call-related databases; and e) access to unbundled network elements listed in Section 51.319 of the CFR.

- (iii) equal in quality as provided to itself;
- (iv) on terms and conditions that are just, reasonable, and nondiscriminatory; and
- (v) two-way trunking upon request if technically feasible.

47 CFR Section 51.305.

Since the interconnection checklist item must be consistent with Sections 251(c) and 252(d), the FCC Interconnection Order, and the Commission's Orders implementing these provisions, Staff recommended that Ameritech be required to provide evidence that each provision actually is being met. Staff Ex. 4.01, at. 3.

With respect to pricing, a single pricing standard for interconnection and network elements is set forth in Section 252(d)(1), which provides as follows:

(d) Pricing Standards.

(1) Interconnection and Network Element Charges. Determinations by a State commission of the just and reasonable rate for the interconnection of facilities and equipment for purposes of subsection (c)(2) of section 251, and the just and reasonable rate for network elements for purposes of subsection (c)(3) of such section

(A) shall be

- (i) based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the interconnection or network element (whichever is applicable), and

- (ii) nondiscriminatory, and

(B) may include a reasonable profit.

47 U.S.C. §252(d).

Staff

Staff states that CCT, MFS, and TCG all have access to the three types of interconnection (physical, virtual, and meet point). Staff Ex. 1.02 at 20. According to Staff, Ameritech is providing virtual collocation to all three carriers and meet point arrangements to MFS and TCG. However, Staff states that Ameritech is not providing physical collocation to any of the carriers, nor meet point arrangements to CCT. It notes that the CCT and TCG arrangements explicitly prohibit the collocation of hubbing equipment. However, the record evidence reflects the fact that hubbing and a variety of other interconnection terms and conditions may be available to these carriers only

through their MFN clauses. According to Staff, CCT has not indicated that it wants additional types of interconnection. Tr. 884. Therefore, consistent with Ms. TerKeurst's testimony, it is Staff's position that Ameritech does not have to provide physical collocation or meet point interconnection to CCT in order to comply with the interconnection checklist requirements.

In the arbitration proceedings, Staff recommended using the Commission's Cost of Service Rule, 83 Ill. Adm. Code Part 791, to calculate a Long Run Service Incremental Cost ("LRSIC") for interconnection and network elements plus a markup to reflect a reasonable share of shared and common costs, excluding retailing costs. Staff Ex. 4.0 at 10. Staff states that its recommendations have been adopted by the Commission, and Staff believes the same methodologies should be utilized in evaluating Ameritech's pricing of interconnection.

In his rebuttal testimony, Staff witness Jennings explained that he reviewed the interconnection provisions of the TCG, MFS, and CCT contracts for compliance with the pricing standards of Section 252(d). He concluded that the prices contained in the TCG contract are the same as those adopted by the Commission in Dockets. 96 AB-003/4 and 96 AB-006. However, he also found that the interconnection prices in the MFS and CCT agreements are significantly higher than those adopted in the above dockets, and that the listed crossconnect rates for collocation did not comply with Section 252(d) because they were not cost-based. Staff Ex. 4.02 at 10-11. Since the Commission set rates for interconnection and collocation that were based on Section 252(d) in Dockets. 96-AB-003/4, Staff concludes that those rates must be used to determine if the rates in the MFS and CCT agreements are consistent with Section 252(d). Staff notes, however, that the price for meet point arrangements in those agreements is consistent with Section 252(d), since each carrier is responsible for its own cost of providing meet point interconnection.

In conclusion, Staff takes the position that while Ameritech provides interconnection to CCT through its agreement, there is no record evidence regarding whether the interconnection terms are consistent with the FCC requirements. Further, it states that the prices are not in compliance with Section 252(d), as discussed above. Because of this, Staff recommends that the Commission find that Ameritech does not meet the checklist requirements for interconnection.

Sprint

Sprint asserts that it should be allowed to mix traffic types (i.e., local, intraLATA, and interLATA) on a single, nonjurisdictional trunk group. Its witness Reeves argues that utilization of such trunk groups is both feasible and necessary to ensure cost-effective and efficient interconnection. Sprint contends that, by refusing to agree to such nonjurisdictional "supertrunks," Ameritech is artificially inflating Sprint's costs and hampering its ability to compete in the local market. With respect to measuring and billing the different traffic types combined on a single trunk group, it asserts that it can provide Ameritech and other connecting companies with accurate and auditable switch records that have commonly been used by neighboring ILECs to determine usage for similar billing purposes.

Ameritech

With respect to Sprint's position regarding use of a single nonjurisdictional trunk group for all traffic, Ameritech answers that the trunking options it provides are consistent with its obligation to transmit and route exchange access traffic. It provides one-way or two-way trunks for the purpose of integrating the end offices and/or tandem offices of carriers for the completion of local switched and interLATA toll traffic. As part of the options provided, Ameritech requires that CLECs use Toll Connecting Trunks ("TCTs") to carry interLATA toll-switched traffic. It maintains that, if nonjurisdictional trunks were used, neither Ameritech nor any other carrier would be able to isolate or measure the volume of each type of traffic that terminates over a single trunk group. This would necessitate the use of estimated percentage factors in lieu of actual measurements to create a bill. Ameritech contends that such "trust me" billing arrangements are not commercially reasonable or cost effective in the present market, noting that they would require costly changes to both Ameritech billing systems for reciprocal compensation and its systems for billing IXC access charges. Ameritech Ex. 2.1 at 9. Its trunking options, in contrast, permit each carrier to bill the originating carrier for actual minutes of use and actual rates at the time the call was made. Ameritech observes that the Commission recognized this in the MCI and Sprint arbitrations, finding that it was impossible to obtain accurate measurements over combined trunk groups and concluding in the Sprint decision that "Sprint will not be unduly impeded from competing in the local market by the adoption of Ameritech' proposed solution." Sprint Arbitration Decision, Docket 96-AB-008 at 6; see also MCI Arbitration Decision, Docket 96-AB-006 at 14-15.

With respect to Staff's position regarding the negotiated collocation prices contained in the CCT-Ameritech interconnection agreement, Ameritech argues that the prices, terms and conditions for interconnection and collocation contained in the AT&T-Ameritech interconnection agreement are available to CCT, MFS and TCG through the MFN clauses of their respective interconnection agreements, which enable those parties to incorporate such terms, conditions and prices at a service and element-specific level. Moreover, Ameritech points out that a substantial amount of record evidence demonstrates that its interconnection offering satisfies the FCC's regulations.

Commission Conclusion

The Commission finds that Ameritech provides interconnection to requesting carriers at all points required for the transmission and routing of telephone exchange traffic, exchange access traffic, or both, in accordance with the applicable FCC Regulations. 47 C.F.R. § 51.305. The Commission further finds that Ameritech has established that, pursuant to Section 251(c)(6), it provides physical collocation on its premises of carrier-owned equipment necessary for interconnection with its network, and virtual collocation where technically feasible.

The Commission further finds that the trunking options Ameritech provides are consistent with its obligation to transmit and route exchange access traffic. Ameritech provides one-way or two-way trunks for the purpose of integrating the end offices and/or tandem offices of carriers for the completion of local switched and interLATA toll traffic. As part of the options provided, Ameritech requires that CLECs use Toll Connecting Trunks to carry interLATA toll-switched traffic. We agree with Ameritech's contention that, if nonjurisdictional trunks were used, neither Ameritech nor any other carrier would be able to isolate or measure the volume of each type of traffic that terminates over a single trunk group, which would in turn necessitate the use of estimated, percentage factors in lieu of actual measurements to create a bill. Such billing

arrangements are not commercially reasonable or cost effective in the present market, as they would require extensive modifications to both Ameritech's billing systems for reciprocal compensation and its systems for billing IXC access charges. Ameritech's trunking options, in contrast, permit each carrier to bill the originating carrier for actual minutes of use and actual rates at the time the call was made. We so found in the MCI and Sprint arbitrations, noting that it was not possible to obtain accurate measurements over combined trunk groups and stating in the Sprint decision that "Sprint will not be unduly impeded from competing in the local market by the adoption of Ameritech's proposed solution." Sprint Arbitration Decision, 96-AB-008, at 6; MCI Arbitration Decision, 96-AB-006, at 14-15. The record evidence in this proceeding presents no reason to reach a contrary conclusion now.

Finally, the Commission disagrees with Staff on the issue of the sufficiency of evidence in the record and that, because the collocation prices negotiated by CCT and Ameritech are purportedly higher than those approved by the Commission in the AT&T-Ameritech arbitration, Dockets. 96-AB-003/004, Ameritech has not complied with the checklist requirements for interconnection. First, we find that substantial evidence in the record addresses and supports the fact that Ameritech's interconnection offerings satisfy the FCC's requirements. Second, as Ameritech correctly notes, the prices, terms and conditions for interconnection and collocation approved in Dockets. 96-AB-003/004, and contained in the AT&T/Ameritech interconnection agreement approved in Docket 96-AA-001, are available to CCT, MFS and TCG through the MFN clauses in those carriers' respective interconnection agreements with Ameritech.

Accordingly, we find that Ameritech has complied with the interconnection requirements of Section 271(c)(2)(B)(i).

2. Network Elements

a. Operation Support System

Checklist item (ii) requires Ameritech to provide nondiscriminatory access to network elements in accordance with the requirements of Sections 251(c)(3) and 252(d)(1). 47 U.S.C. §271(c)(2)(B)(ii). Under Section 271(c)(2)(B)(ii), Ameritech must provide access to unbundled network elements in accordance with Section 251(c) and the rules and regulations adopted by the FCC Order. Furthermore, Ameritech must meet any additional requirements established by the Commission based on Section 251(c) or the FCC Order.

In its Order, the FCC has established, at a minimum, the network elements that must be made available by an incumbent LEC. These elements are as follows:

- (a) Local loop;
- (b) Network Interface Device;
- (c) Switching Capability including:
 - (1) Local Switching; and
 - (2) Tandem Switching Capability;
- (d) Interoffice Transmission Facilities;
- (e) Signaling Networks and Call-Related Databases including:

- (1) Signaling Networks (signaling links and signaling transfer points) and
- (2) Call-Related Databases (used in signaling networks for billing and collection or the transmission, routing, or other provision of a telecommunications service (e.g., LIDB, 800, etc.) and;
- (3) Service Management Systems;
- (f) Operations Support Systems Functions ("OSS") (pre-ordering, ordering, provisioning, maintenance and repair, and billing functions supported by an incumbent LEC's databases and information by no later than January 1, 1997); and
- (g) Operator Services and Directory Assistance. 47 CFR Section 51.319. All of these items except Network Interface Devices, Tandem Switching Capability, and OSS Functions are listed as separate checklist items in Section 271(c)(2)(B), in addition to the general network element item in Section 271(c)(2)(B)(ii).

In this section, we address Ameritech's provision of nondiscriminatory access to OSS, network interface devices, and dark fiber. Ameritech's provision of nondiscriminatory access to other unbundled network elements is addressed elsewhere in this Order.

Staff

Staff points out that the OSS are crucial to the development of local exchange competition. In light of their importance, it recommended that Ameritech be required to demonstrate, through empirical evidence, that its OSS are operational and functional; otherwise carriers may never be in a position actually to purchase unbundled network elements and/or wholesale services from Ameritech. Staff further contends that the only way to ensure this is through actual use because internal testing by Ameritech does not assure that other carriers will be able to utilize its system.

Staff contends that the OSS are mutually dependent on both Ameritech and the interconnecting carriers and that Ameritech should not simply have the OSS set up on its side of the interface and await interconnection and use by other carriers. Staff Ex. 4.02 at 2. Staff witness Jennings noted that in order for the OSS to work in a commercially feasible manner, Ameritech has the added responsibility to ensure the connecting carriers have sufficient information of its OSS, including working with carriers that experience rejected orders and/or orders that require manual intervention.

Staff contends that it was not sufficient for Ameritech's OSS to have undergone internal testing in order for the OSS to be deemed operational. Staff states that the completion of internal testing of the various OSS is no assurance that other carriers will be able effectively to utilize the OSS in a commercially feasible manner. Staff notes that there may be oversights in a carrier's implementation of Ameritech's OSS specifications manuals. Alternatively, Staff states that Ameritech's OSS specification manuals may not be entirely clear, so that a carrier may reasonably interpret the manuals differently than interpreted by Ameritech. Such a situation would result in an error and failure to complete an order. Therefore, Staff asserts that it is essential that Ameritech's OSS meet the following criteria: internal testing by Ameritech; testing with other carriers; and operational readiness. The operational readiness is the most difficult criterion to define and can be different for each carrier. It is dependent on a carrier's testing with Ameritech to a level where the carrier can successfully utilize Ameritech's OSS on a commercially feasible level.

Staff defines a commercially feasible level as a level which implies that carriers are able to utilize Ameritech's OSS in a manner sufficient to accommodate the demand of a new LEC's services by end users. Id. at 3. Staff contends that in order for a carrier to effectively compete in the local exchange market, the carrier must be able to offer its services to the general public with the expectation that all service orders will be processed.

With respect to the current status of the five OSS interfaces, Staff states as follows:

1. With respect to the pre-ordering interface, Ameritech has performed carrier to carrier testing with USN for the access to customer service record, telephone number selection, and due date selection. Tr. 1046. USN is the only carrier in Illinois currently utilizing the pre-ordering OSS interface. Staff Cross Ex. 3, Question 3-6.
2. The ordering OSS consist of two separate interfaces, an EDI interface for resale services and an ASR interface for trunks and unbundled loops. Staff Cross Ex. 3, Question 3-2. Ameritech has completed internal testing of the EDI and ASR interface. Staff Cross Ex. 3, Question 3-7. USN is the only carrier in Illinois currently utilizing the EDI interface for ordering resale services. Ameritech has performed carrier-to-carrier testing with USN for the EDI interface and AT&T is currently in the testing phase of the EDI ordering interface. Tr. 1047-1049. In addition, Ameritech has performed carrier to carrier testing of the ASR interface with MFS; however, this interface has been available for other purposes (i.e., ordering trunks) for some time. Tr. 1049. Both MFS and CCT currently are using the ASR interface for ordering unbundled loops and trunks. Staff Cross Ex. 3, Question 3-7.
3. The provisioning interface also consist of two separate interfaces, EDI and ASR. The EDI provisioning interface includes the following functions: order confirmation, order jeopardy, and order completion. The ASR provisioning interface just includes the provisioning function which allows the ability to identify that an order is being processed by Ameritech. Staff states Ameritech has performed internal testing of both the EDI and ASR provisioning interface. Staff Cross Ex. 3, Question 3-8. Ameritech has performed carrier-to-carrier testing for firm order confirmation and order completion functions with the same carriers that tested the ordering EDI interface. Tr. 1049. However, Ameritech has not performed carrier-to-carrier testing of the order of jeopardy function. Tr. 1050. Currently, USN is the only carrier in Illinois currently using the EDI provisioning interface. However, both MFS and CCT are currently utilizing the ASR provisioning interface.
4. The billing OSS includes the following functions: daily usage, bill lines (ACIS billing format), and bill trunks (CABS billing format). Staff Cross Ex. 3, Question 3-4. Ameritech has completed internal testing of the billing interface. Staff Cross Ex. 3, Question 3-9. In addition, Ameritech has performed carrier-to-carrier testing of the billing interface with several companies. Tr. 1050. Currently, USN, MFS, United Communications, OneStop, and LCI are using the daily usage and bill lines function of the billing interface. MFS and CCTS are using the bill trunks interface. Staff Cross Ex. 3, Question 3-9.
5. The repair and maintenance OSS includes trouble entry and trouble status. Staff Cross Ex. 3, Question 3-5. Ameritech has completed internal testing of both trouble entry

and trouble status functions. However, Staff asserts that there has been no carrier-to-carrier testing of the repair and maintenance interface. Tr. 1050-1051. Ameritech is not currently providing the repair and maintenance OSS in any of its five state region. Staff Cross Ex. 3. Question 3-10.

Using the three criteria referenced by Mr. Jennings, internal testing, carrier-to-carrier testing, and operational readiness, Staff takes the position that the OSS requirement has not been met. The pre-ordering interface has just been developed and only one carrier is currently utilizing it. Supra. In addition, only USN is currently utilizing the provisioning interface.

Staff notes that the CCT/Ameritech agreement provides for OSS. Sections 9.5.1 and 17.0 of the agreement. Staff refers to Section 17.0 which states that Ameritech will provide OSS consistent with the 1996 Act and the FCC Order. Staff also refers to the testimony of CCT witness Scott Jennings, which states that CCT is experiencing difficulty advising customers about the status of repairs and that CCT was still experiencing problems. Tr. 896. Staff further notes that Mr. Jennings testified that CCT will be requesting electronic interfaces for repair and maintenance at the next meeting with Ameritech. Tr. 927. Based on all of the foregoing, Staff recommends that the Commission find that Ameritech has not met the OSS checklist requirement.

AT&T

AT&T submitted that Ameritech has yet to fulfill the checklist requirement to provide nondiscriminatory (i.e., at parity with Ameritech's retail operations) access to its OSS for pre-ordering, provisioning, maintenance, repair, and billing. AT&T agreed with Staff and other parties that the development of electronic interface specifications can be deemed complete only after a period of meaningful integration testing. Such operational testing has not taken place. It is not until there is a proven ability to communicate effectively and efficiently, from end-to-end, that a system can be said to be in a state of operational readiness.

AT&T noted that such systems do not now exist in Illinois. Instead, the evidence demonstrates that the specifications for the electronic interfaces are being continually updated and revised by Ameritech, making it difficult for CLECs to design their interfaces to be compatible with those of Ameritech. (Rogers, Tr. 1106-1107). In addition, the evidence unequivocally shows that the interfaces have not been tested to show that they are operationally ready, i.e., ready to be used by CLECs on a commercial basis actually to serve customers.

Most importantly, AT&T stressed that the integrity of Ameritech's OSS process is suspect and has not been sufficiently operationally tested under marketplace conditions. AT&T notes that at least 70% of the orders processed over Ameritech's electronic interfaces have, for undisclosed reasons, "fallen out" to manual processing efforts. (Rogers Tr. 1071, 1143-45). This inability to process orders electronically raises serious questions as to whether Ameritech can reliably handle competitively significant volumes of orders in real-world conditions. AT&T also notes that Ameritech's marketplace testing of its OSS has been confined to small carriers and that even these carriers have recorded significant problems with Ameritech's OSS.

With respect to unbundled network element ("UNE") combinations for the UNE platform, AT&T notes that Ameritech has not submitted any specifications. Similarly, it has not conducted any testing relating to UNE.

AT&T further contended that Ameritech's proposals for measuring whether it is providing access to OSS at parity, as required by the Act and the FCC regulations, are deficient. For instance, in assessing time to repair POTS, Ameritech proposes to report only on its success rate at restoring service within a 24 hour time period, tracking "% exceeding" that stated target. (Mickens Rebuttal, Ameritech Ill. Ex. 8.0, Schedule 2). This approach would not reveal disparities in average performance within the targeted range. For instance, assume that the average "time to restore" for Ameritech customers was five hours as compared to an average "time to restore" of 20 hours for AT&T customers but, in both cases, restoration time exceeded Ameritech's target interval in only 3% of the cases. Ameritech's proposed parity performance report would report this level of performance as "nondiscriminatory."

AT&T further asserts that Ameritech's plan does not account sufficiently for service mix differences. For example, installation intervals for complex business orders are likely to be substantially longer than installation intervals for single-line residence basic local service. Yet Ameritech proposes that it report average performance across all services, potentially masking poor performance in any individual area. For example, an average installation interval of ten days may be acceptable if 90% of the orders were complex business orders but wholly unacceptable if 90% of the orders were for basic single-line residential service. In fact, internal Ameritech performance reports separate performance data between residence and business. (Mickens, Tr. 1383; AT&T Cross Exhibit 11).

Similarly, AT&T points out that Ameritech's proposal fails to account for varying activity mixes. As a simple example, service repair where a premises visit is required will, on average, take more time than service repair that is remotely administered. A single restoration interval covering both scenarios likewise may result in deceptive performance results. Again, internal Ameritech reports acknowledge similar distinctions (Mickens, Tr. 1390-92; AT&T Cross Ex. 12). See also Pfau Supp. Testimony,, AT&T Ex. 3.1 at 5-14.

For all of these reasons, AT&T concluded that it is far too premature to find that Ameritech has satisfied this checklist item especially in light of OSS's importance to effective market entry and Ameritech's disincentive to ensure their full implementation if it is granted interLATA authority now.

Sprint

Sprint agrees with Staff's view that the best way to evaluate whether Ameritech's OSS are functional is through actual use rather than sufficient internal testing by Ameritech. It asserts that it is far too premature to gauge whether Ameritech's OSS is operational.

Ameritech

Ameritech states that there are two key elements for purposes of determining whether it meets its OSS obligations. Ameritech Ex. 9.0 at 3. The first element, which it calls "operational readiness," is that the interfaces must be operational in the marketplace and/or have undergone sufficient testing to ensure that they will provide competitors with the requisite OSS-related capabilities. Id. Ameritech refers to the second element as "capacity readiness," which refers to sufficient capacity being built into the interfaces or the interfaces must be expandable on a timely

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enough basis to respond to marketplace demand. Ameritech contends that its OSS interfaces meet these standards.

Ameritech introduced evidence describing the operational readiness of its interfaces. With respect to the pre-ordering interface, which is used for both resold services and unbundled network elements, Ameritech states that internal testing was completed for all applicable functions; including access to CSRs, telephone number selection and due date selection. The remaining two functions, address validation and feature availability, also have been tested, and have been up and running since February 1996. *Id.* at 27; Ameritech Ex. 8.0 at 18. With respect to the ordering, provisioning, repair and maintenance, and billing interfaces for unbundled network elements, Ameritech states that they were thoroughly tested before being put in commercial operation. Ameritech Ex. 9.0 at 7, 9. Ameritech further states that since April 1995 the ASR ordering interface has been used to process orders for unbundled loops. *Id.* at 7; AJ Ex. 8.0 at 24. Ameritech further states that the provisioning interface, which provides firm order confirmations, has been processing live transactions since April 1996. Ameritech Ex. 9.0 at 7. It further asserts that the repair and maintenance interface currently is in use by AT&T and MCI and will soon be in use by Sprint, in connection with carrier access services. *Id.* at 8. Ameritech states that this interface has been up and running for almost two years. Ameritech Ex. 8.0 at 7-8. It states, however, that thus far competing providers of local service have not requested it, as they prefer to use a manual interface. Ameritech Ex. 9.0 at 8. Billing for unbundled loops has been provided through the Carrier Access Billing System ("CABS") since April 1995. *Id.* at 9. With respect to resold services, the interfaces have been subject to extensive internal testing and carrier to carrier testing. *Id.* at 10-11, 13-23. The resale ordering interface has been operational and in use by USN since February 1996. Ameritech Ex. 8.0 at 6, 24. In addition, during system testing with AT&T, live customer accounts have been converted to AT&T accounts. Ameritech Ex. 9.0 at 11. All three provisioning functions-firm order confirmation, order completion, and order status-are operational, and the first two are being used by USN. The repair and maintenance interface for resold services is the same interface used for unbundled network elements, and has not yet been requested by a local carrier. *Id.* at 11-12. The resale billing interfaces have been operational since February 1996, and have been used to send bills and daily usage feeds since April 1996. *Id.* at 12. Its interfaces are consistent with industry standards. Ameritech Ex. 8.0 at 6-9; Tr. 1053, 1090.

Ameritech provided additional information pertaining to the operational readiness of its OSS interfaces. It provided testimony stating that internal testing of the pre-ordering interface has been completed. Staff Cross-Ex. 3 (JEJ 3-6). Ameritech states that the pre-ordering interface underwent carrier-to-carrier testing with USN, and was implemented by USN, in January 1997. Tr. 1046-47. Ameritech avers that the resale ordering interface was tested by USN for about three months in 1996, and then implemented by USN. Tr. 686, 740-41, 1048-50. It states that the order status function of the resale provisioning interface became available on December 16, 1996, but, up to the present, no competing carrier has requested to test or use it. Tr. 1050. Ameritech notes that order status is not a separate interface, but just an additional transaction going over an existing interface. Tr. 1170. It states that the ASR ordering interface for unbundled network elements underwent carrier-to-carrier testing with MFS, and currently receives 1400 orders per month in Illinois from CCT and MFS, and responds with firm order confirmations. Staff Cross-Ex. 3 (JEJ 3-7 through 3-8).

On the issue of capacity, Ameritech argues that its interfaces have more than enough capacity to meet marketplace demand. Ameritech Ex. 9.0 at 28-44, Sch. 2. Ameritech explains that it planned capacity based on demand forecasts where competing carriers supplied them, and on aggressive market entry scenarios for non-responding carriers; as a result, the capacity required to serve large carriers like AT&T and MCI when they enter the market already is in place. AI Ex. 8.0 at 21-22; Ameritech 9.0 at 28-29, 32-35. Ameritech explains further that it planned capacity with at least a 6-month lead built-in, so there is enough capacity installed now to meet the projected demand for July 1997, and there will be enough capacity in July to meet demand in December.

Ameritech argues against application of Staff's proposed three-part test for OSS compliance. Ameritech Brief at 65-71. It asserts that Staff's proposed test reflects and implements its broader policy/legal view that all checklist items actually must be furnished to competing carriers on a commercial basis. *Id.* at 66. Thus, the grounds on which Ameritech opposes Staff's broader position are applicable in the OSS context as well. *Id.* In addition, Ameritech argues that Staff's three-part test constitutes an illegitimate expansion of the controlling FCC requirement that OSS interfaces be provided "upon request." *Id.* at 66-67 (citing First Report and Order, ¶ 525). Moreover, Ameritech argues, Staff's proposed test lacks well defined standards against which its efforts to comply could be measured; in particular, Staff offers no clear guidance for determining the point at which "each carrier" has been afforded a "reasonable opportunity" to design, implement and test the interfaces, and is "successfully utilizing" the interfaces on a "commercial scale." *Id.* at 67-69.

Finally, Ameritech argues that Staff's test is poor public policy because: (1) the requirement that "each carrier" be given the same "reasonable opportunity" in the OSS context clashes with Staff's willingness to accept a "mix and match" approach in other areas; (2) this same requirement will guarantee Ameritech's competitors a head-start in the "one-stop shopping" marketplace; and (3) Staff's approach renders Ameritech's checklist compliance completely dependent on the actions and good faith of its competitors -- even though Staff recognizes that carriers might not interface successfully with Ameritech's OSS for reasons wholly unrelated to its actions. *Id.* at 69-71.

With respect to AT&T's allegations, Ameritech responds that its interface specifications are well-defined and stable, and charges that AT&T fails to identify any specific deficiencies or material changes of the sort that would require competing carriers to redesign their systems just to maintain existing functionalities. Ameritech Brief at 72-74. It observes further that, beyond specifications, it provides competing carriers with training manuals, sends experienced personnel to provide "walk-throughs" of OSS processes, and offers to review the design and implementation of competing carriers' systems. *Id.* at 73-74. According to Ameritech, AT&T did not take full advantage of these opportunities. *Id.* at 74.

Second, Ameritech takes exception to AT&T's examples of its alleged failure to comply with industry standards. *Id.* at 74-77. It states that USOCs are not defined by Ameritech, but by Bellcore, for use on a nationwide basis. *Id.* at 75. Third, in response to AT&T's charge that it refused to share its "business rules" in connection with 860 transactions, Ameritech cites to AT&T witness Connolly's concession on cross examination that, although he previously testified that Ameritech disclosed its approach to 860s only after AT&T sent its first 860 in October 1996, in fact, specifications issued by Ameritech in early August 1996 clearly laid out Ameritech's approach. *Id.* at 77. Fourth, regarding the testing with AT&T, Ameritech cites to Mr. Rogers'

analysis of the results, in particular the reasons for order rejections, which tend to show that the rejections were proper and not caused by Ameritech's side of the interface. *Id.* at 78-80. Ameritech also contends that the manual intervention rate is irrelevant to checklist compliance, because the checklist obligation is to provide electronic access to OSS functions, not fully electronic processing of all orders. *Id.* at 80. With respect to the processing of orders, the relevant inquiry is whether due dates are met on a parity basis.

COMMISSION CONCLUSION

Ameritech's provision of this item does not meet the standards we espoused earlier in Section II. C. of this order. The problem is clear – it is simply too early for us to determine whether the OSS will operate properly. We are not convinced that the internal testing performed by Ameritech can solve all of the problems that will arise. Without actual testing with other carriers, this checklist item cannot be available. We agree with Staff that we must be provided with empirical evidence that Ameritech's OSS are operational and functional.

We are especially concerned with the problems described in the testimony of CCT witness Scott Jennings, which indicates that CCT is experiencing difficulty advising customers about the status of repairs and that it was still experiencing problems.

Meeting this checklist item requires more than Ameritech having its side of the interface operational. In order to meet the checklist, Ameritech must ensure the connecting carriers have sufficient information of Ameritech's OSS, including working with carriers that experience rejected orders and/or orders that require manual intervention.

Ameritech must also show that carriers are able to utilize Ameritech's OSS in a sufficient manner that will accommodate the demand of a new LEC's services by end users. At this point we are not convinced that carriers will be able to offer its services to the general public with the expectation that all service orders will be processed.

b. Network Interface Devices

Ameritech

Ameritech contends that its Network Interface Device ("NID") offering fully satisfies the requirements of the Act and the FCC's regulations. NIDs serve as the point of connection between an Ameritech loop and an end user's inside wire. They also serve to provide lightning protection to the Ameritech loop. FCC regulation requires that Ameritech permit requesting carriers to access end user inside wire through a connection between their own NIDs and those of Ameritech. 47 C.F.R. § 51.319(b).

Ameritech notes that no party challenged its provision of NIDs as a network element during this proceeding. Upon request, it permits requesting telecommunications carriers to access end user customers' inside wires through the Ameritech NIDs. A requesting carrier may do so by installing NIDs at the end of its own loops connecting it to the Ameritech NIDs. Although thus far no party has requested access to Ameritech's NIDs on an unbundled basis, Ameritech provides such access through its interconnection agreements with MFS and CCT. Ameritech Ex. 2.2, Schedule 2. Accordingly, Ameritech requests that the Commission find that it has satisfied this aspect of the

Checklist requirements.

Commission Conclusion

The Commission concludes that Ameritech is providing access to NIDs as required by the Act and FCC Regulations.

c. Dark Fiber

MCI

MCI contends that Ameritech is required to offer dark fiber as an unbundled network element. MCI witness Marzullo argues that dark fiber constitutes "equipment or facilities" used to provide transport within the meaning of Section 3(45), and thus is a network element for purposes of the Act. MCI Ex. 2.0 at 13.

Ameritech

Ameritech acknowledges that the Commission addressed this issue in the MCI arbitration, finding that dark fiber is a network element under the Act. MCI Arbitration Decision, 96-AB-006, .

3. Poles, Ducts, Conduits, and rights-of-way

Checklist item (iii) requires Ameritech to provide non-discriminatory access to the poles, ducts, conduits and rights-of-ways owned or controlled by it at just and reasonable rates in accordance with the requirements of Section 224.

AT&T

AT&T argues that "poles, ducts, conduits, and rights of way" should be defined broadly to include various "pathways" such as entrance facilities; riser ducts; controlled environmental vaults; telephone equipment closets; remote terminal buildings, huts, or enclosures; cross-connect cabinets, panels, or boxes; and various other property. AT&T Ex. 7.0 at 4-5. AT&T witness Lester maintains that a broad definition of structure is necessary to enable new entrants to use their own facilities to reach potential customers and thus to develop a competitive market. Id. at 5. It is suggested that a broad definition of structure is consistent with the FCC's Order, which states that the directive of Section 224(f)(1) "seeks to ensure that no party can use its control of the enumerated facilities and property to impede, inadvertently or otherwise, the installation and maintenance of telecommunications and cable equipment by those seeking to compete in those fields." First Report and Order, ¶ 1123. AT&T contends that Ameritech's narrower definition of structure is inconsistent with the Act, and that Ameritech is improperly seeking to impose various discretionary operational and administrative hurdles on competing carriers to make obtaining access to facilities unduly difficult.

AT&T also testified that it has had difficulties in its several years of dealing with Ameritech in connection with AT&T's provision of long distance service. Id. at 25-26. AT&T witness Lester suggests that, in certain instances, Ameritech has denied access to its conduits, fallen short of

AT&T's performance expectations or delayed in meeting its delivery dates, or imposed "make ready" costs as a means of passing on its own maintenance and repair costs. Id. 7.0 at 25-26. AT&T contends that Ameritech's history in this regard indicates that Ameritech may use its position to hamper the ability of new competing carriers to serve their customers. Id. at 26.

Staff

Early in this proceeding, Staff expressed a concern that Ameritech's testimony did not demonstrate whether any new entrants to the market currently were using its poles, ducts, conduits, and rights-of-way. Staff Ex. 3.02 at 6. Staff witness Gasparin recognized that Ameritech offers access to poles, ducts, conduits, and rights-of-way "from a contractual standpoint," but recommended that Ameritech provide a list of current and future parties attaching "from a usage standpoint." Staff Ex. 3.02 at 6. Absent such evidence, Staff suggested that Ameritech could satisfy the checklist requirement only on a "track B" basis. Id.

Staff subsequently noted that Ameritech has provided information on its actual provision of poles, ducts, conduits, and rights-of-way. Staff Ex. 3.02 at 4. Staff witness Gasparin acknowledged that Ameritech is providing such structure to CCT and that it has reached agreements to provide access to structure to MFS and TCG. Staff Ex. 3.02 at 4. Staff observed that Ameritech' Schedule 5 provided the quantity of conduit used by other carriers, but found that Schedule 5 did not provide data on the use of ducts, poles, or rights-of-way. Staff Ex. 3.02 at 4.

When Staff witness Terkeurst was cross-examined regarding whether Ameritech actually must furnish all of the items in checklist item (iii) in order to meet the checklist requirements, she stated that it was a judgment call, and that staff didn't "have a really firm policy on that at this time." Tr. 1474-75.

In its brief, Staff notes that Ameritech witness Dunny's Schedule 2 indicates Ameritech currently offers access to poles, conduits, and rights-of-way to CCT and has also reached agreement to offer access to these services to MFS and TCG. It is stated by Staff that, while ducts and conduits may serve the same function, as Ameritech indicates, the physical characteristics of the two may differ. Staff also observes that CCT witness Jennings testified that, while the CCT agreement addresses poles, ducts, conduits, and rights-of-way, CCT is using only poles at this time. Staff still takes no position in its brief with regard to whether Ameritech has met the requirements for the entire checklist item based on its provisioning of poles to CCT.

Ameritech

Ameritech contends that it satisfies the requirements of the Act by providing structure to attaching parties (1) on the same basis that it is provided to Ameritech (Section 271(c)(2)(B)(iii)), (2) at just and reasonable rates (id.), and (3) with the costs of any required modifications allocated in accordance with the FCC's rules (47 C.F.R. § 1.1416).

In direct testimony, Ameritech witness Bell explains that Ameritech facilitates nondiscriminatory access to its structure primarily in three ways: (1) by providing nondiscriminatory access to structure maps and records; (2) by using a fair methodology for allocating spare capacity between competing attaching parties; and (3) by assuring nondiscriminatory treatment in completing the process steps, such as surveying and construction

work necessary to deliver structure to attaching parties. Ameritech Ex. 6.0 at 3-6. Mr. Bell explains that access requests are made to Ameritech's Structure Access Coordinator and are subject to a "first in time, first in right" priority queue, which applies to all carriers including Ameritech. Ameritech Id. at 10. Ameritech will deny access to structure only for reasons of safety, reliability, or engineering limitations, or if a request would be inconsistent with state or local laws, such as zoning ordinances. Ameritech testifies that, in such circumstances, it will meet with the attaching party before denying a request. Ameritech Id. at 10-12. This process ensures the most efficient allocation of existing capacity and prevents attaching parties from reserving capacity. AI Ex. 6.0 at 12-14. If no spare capacity exists at the time of a given request, Ameritech will modify the relevant structure and recover the costs of modification in accordance with the FCC's rules, which are incorporated in the SGAT. Ameritech Id. at 14-16. Moreover, requests are governed by a well-defined process detailed in Ameritech's structure leasing guidelines. Bell further develops this position in his rebuttal and live testimony. Ameritech Id. at 20-24; AI Ex. 6.1 at 16-17, 24-25; Tr. 427, 429.

In the rebuttal phase of this proceeding, Ameritech testifies that significant quantities of structure are already in use by attaching parties. Ameritech Id. at 14. In 1996, for example, Ameritech received over 300 requests for over 380 miles of conduit from AT&T alone — requests that were far greater, in scale and in scope, than any project Ameritech has completed for itself in a comparable time frame. Ameritech has administered those requests expeditiously, notwithstanding AT&T's frequent cancellations, changes in requirements and priorities, and failures to prioritize its requests. Ameritech Id. at 14-15. Ameritech also testifies, in the later phases of this proceeding, that it is providing structure to several other parties including CCT. Tr. 439-42; Ameritech Id. at 12.

Ameritech maintains that AT&T's definition of the term "right of way" is overly broad and encompasses virtually every legal interest in property that Ameritech owns or controls. Ameritech Ex. 6.1 at 3. Mr. Bell states in his rebuttal testimony that this extreme definition is inconsistent with both the Act's purposes and the FCC's Order, which declares that "[t]he intent of Congress in section 244(f) was to permit cable operators and telecommunications carriers to 'piggyback' along distribution networks owned or controlled by utilities, as opposed to granting access to every piece of equipment or real property owned or controlled by the utility." First Report and Order, ¶ 1185. Ameritech also notes that AT&T's broad definition of rights-of-way has been rejected by this Commission. Dockets. 96-AB-003 & 96-AB-004, Order at 29.

Commission Conclusion

This is an item that, like OSS, unforeseen problems can arise between Ameritech and a competing provider. Other than providing poles to CCT, Ameritech has not furnished poles, ducts, conduits or rights-of-way to any competing provider. At this point, the Commission is of the opinion that we cannot find that this checklist item is met based upon the Ameritech's provisioning of poles to CCT.

We are especially concerned about Ameritech's definition of structure which may be too narrow and, thus, may be inconsistent with the FCC's Order, which states that the directive of section 224(f)(1) of the Act "seeks to ensure that no party can use its control of the enumerated facilities and property to impede, inadvertently or otherwise, the installation and maintenance of telecommunications and cable equipment by those seeking to compete in those fields." First Report and Order, ¶ 1123.

4. Unbundled Local Loops

Checklist item (iv) requires Ameritech to provide local loop transmission from the central office to the customer's premises, unbundled from local switching or other services. Section 51.319(a) of the FCC's Order defines a local loop network element as a cross-connect device used to connect loop facilities to inside wiring.

Staff

Staff states that based on the record evidence, Ameritech is providing local loop transmission from the central office to the customer's premises, unbundled from local switching or other services.

Staff contends that the next inquiry is whether the manner in which Ameritech is providing local loops is consistent with the terms and conditions required by the 1996 Act, the FCC's Order and/or Commission Orders and Rules. With respect to this issue, Staff notes that on June 15, 1996, CCT filed an informal complaint regarding the local loop service installation intervals by Ameritech for CCT customers. Ameritech responded to the complaint on June 27, 1996.

Staff refers to the cross examination of CCT witness Scott Jennings, who testified that in May to June of 1996, CCT received complaints from consumers that it took Ameritech less time to provide service than it took CCT to provide service. He stated that Ameritech used this as a marketing tool to its customers. Tr. 849, lines 10-22. He did state that in his opinion, Ameritech's performance had improved since the May to June time period referenced in his testimony. He also stated that he did not believe that the performance criteria set forth in CCT's contract for the provision of local loops was in parity with the one which Ameritech provides to its unbundled loop customers.

Staff further states that while Ameritech provides unbundled loops to CCT through its agreement, there is no record evidence regarding whether the interconnection terms and conditions are consistent with the FCC requirements. Staff further states that the prices are not in compliance with Section 252(d), as is the case with network elements. Because of this, Staff recommends that the Commission find that Ameritech does not meet the checklist requirements for unbundled local loop transmission.

CCT

Although CCT witness Jennings addressed several loop provisioning issues in his pre-filed testimony, his subsequent testimony provides a substantial update and indicates that many of the issues have been resolved. Among the remaining issues, CCT stated that Ameritech does not apply the same standards to itself for the provisioning of an unbundled network access line as it does for

the provisioning of an unbundled loop to CCT. Tr. 860. CCT further testified that Ameritech does not satisfy the performance objective of restoring service within a 24-hour period. Tr. 862-63.

MFS

In its brief, MFS argues that the provisioning delays that Ameritech's competitors have experienced in obtaining access to unbundled elements, including loops, precludes competitors from offering service as attractive to customers as Ameritech's service, and therefore precludes a finding of nondiscriminatory access. MFS maintains that it too has had problems resolving provisioning issues with Ameritech, including unreasonably long provisioning intervals for DS1s and DS3, and ISDN cross connects; unreasonably long processing and installation; and shortages of personnel. As to Ameritech's testimony that its standard provisioning intervals for 1 to 4 DS1 loops was five business days, MFS contends that it has not received such efficient service. MFS Brief at 7-10. It is argued that, because Ameritech does not compare provisioning intervals and maintenance times for services that it provides both to itself and to its competitors, the Commission has no way of measuring Ameritech's performance. Until Ameritech can provide such data, MFS argues that the Commission should not find that it has satisfied the checklist. MFS Brief at 10-11.

MFS also proposes in its brief that Ameritech should be required to establish a separate affiliate to provision loops. MFS Brief at 11-14. MFS suggests that Ameritech's performance reports will be insufficient to ensure nondiscriminatory access, but that the possibility for discrimination would significantly decrease if Ameritech provided loops through an affiliate.

Sprint

In its brief, Sprint maintains that the testimony of CCT and MFS, companies already competing with Ameritech, demonstrates that Ameritech does not satisfy the checklist. Sprint points to the testimony of CCT witness Jennings, and to the testimony of MFS witness Durbin. Sprint Brief at 17-18 (citing MFS Ex. 1.0 at 26; CCT Ex. 1.0 at 8-9, 11-14; CCT Ex. 2.0 at 3-4).

TCG

In its brief, Teleport Communications Group echoed concerns similar to those raised by CCT. In reliance upon the testimony of AT&T witness Fonteix, TCG argues that Ameritech is attempting to control the growth of its competitors by establishing lengthy provisioning intervals for unbundled loops. TCG suggests that a lack of standards and a lack of deadlines permits Ameritech to avoid accountability for its failures to provide requested services in a timely manner. TCG Brief at 12 (citing AT&T Ex. 5.0 at 16-17).

Ameritech

Ameritech states that it offers documentation indicating that it currently furnishes unbundled loops to both MFS and CCT under negotiated agreements with each carrier. It states that it has already has provisioned 6,600 loops to CCT, and provides access to eight different unbundled loop types pursuant to the AT&T Agreement (and MFN clauses of other interconnection agreements) and to other loop types through a bona fide request process. Ameritech Ex. 2.2,

Schedule 1, at 4; Tr. 871. Ameritech states that each of its loop offerings provides a transmission path beginning at a distribution frame, or its equivalent, located in an Ameritech central office and ending at a NID at the end user's premises. Thus, it argues, these loop offerings fully comply with the applicable FCC Regulation, 47 C.F.R. § 51.319(a).

In response to CCT's complaint that Ameritech applies different standards for the provisioning of an unbundled network access line to its own customers than it does for the provisioning of an unbundled loop to CCT, Ameritech argues that, operationally, an unbundled network element — such as a loop — cannot reasonably be compared to bundled services — such as a network access line — that Ameritech provides to its end users. It asserts that its unbundled network access line connects a loop to central office equipment to provide "port" functions such as dial tone, access to the switched network and vertical features, as well as the ability to originate and receive calls. In contrast, it states that an unbundled loop provides only the functions associated with the loop while providing none of the port functions provided by a network access line. Moreover, it is contended, the provisioning of unbundled loops requires special steps, because more than one carrier is necessarily involved in providing local exchange service to the end user customer. These steps relate to the coordination of loop installation with other requests such as disconnection of related exchange services or the simultaneous establishment of number portability. Ameritech Ex. 3 at 32. Accordingly, Ameritech and CCT have agreed to specific provisioning intervals for unbundled loops that do not entail a comparison with bundled service provision intervals. Ameritech Ex. 2.2, Schedule 5, at 41. Accordingly, Ameritech and CCT have agreed to specific provisioning intervals for unbundled loops that do not entail a comparison with bundled service provision intervals. Ameritech Ex. 2.2, Schedule 5, at 41.

With respect to CCT's statement that Ameritech Illinois is not satisfying the performance objective of restoring service within a 24-hour period, Ameritech replies that in December 1996, the month the CCT agreement was signed, it completed repairs within 24 hours 79% of the time — a number consistent with the requirement in the agreement that repairs be completed within 24 hours an average of 80% of the time, and that the 24-hour repair rate not drop below 60% in any given month.

Commission Conclusion

The Commission finds that Ameritech has not established that it satisfies the checklist requirements for provision of unbundled loops. At this point in time, we are concerned about the provisioning delays that Ameritech competitors have experienced in obtaining access to unbundled elements, including loops, precludes competitors from offering service as attractive to customers as Ameritech Illinois' service. As previously stated in this Order, this Commission must be confident that the item can be provided to the requesting party on a non-discriminatory basis and at a quality level that is at parity with the quality that it itself receives. This is not the case at this point in time.

5. Unbundled Local Transport

Checklist item (v) requires Ameritech Illinois to provide local transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services.

In its brief, Staff argues that, while Ameritech provides unbundled local transport to CCT through its special access tariff, the only evidence regarding whether the terms and conditions on which it is provided are consistent with the FCC's Order is Ameritech Witness Dunny's statement that "[i]t would be my opinion it would be." Tr. 542. Further, Staff states, Ameritech's prices are higher than Section 252(d) requires. Staff Brief at 74 (citing Staff Ex. 4.00 at 18). Also, in Staff's view, Section 271(c)(1)(A) contemplates that the checklist items would be provided pursuant to binding agreements that have been approved under Section 252, rather than under an access tariff — unless the tariff has been incorporated into an agreement. In light of these factors, Staff recommends that the Commission find that Ameritech has not met the checklist requirements for unbundled local transport.

Ameritech

Ameritech contends that its offering of unbundled local transport fully complies with the competitive checklist, as well as FCC rules. It notes that Section 271(c)(2)(B)(v) requires provision of local transport "from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services," and asserts that trunk side local transport is precisely what it is providing. Ameritech also maintains that the term "Interoffice Transmission Facilities," as used in 47 C.F.R. § 51.319(d), and "Local Transport," as used in Section 271 of the Act, are the same thing. Ameritech Ex. 2.2 at 6. It suggests that it satisfies that provision by (1) offering both dedicated and shared transport, (2) offering all technically feasible transmission facilities, features, functions, and capabilities that have been requested by other carriers, either through negotiation or a Bona Fide Request process, (3) providing all technically feasible connections that have been requested by other carriers, and (4) offering its tariffed digital cross connect service, Ameritech Illinois Network Reconfiguration service (ANRS), for use with unbundled local transport — exactly the same tariffed service provided to interexchange carriers. *Id.* Ex. 2.2 at 7-9.

Ameritech presented evidence that it currently provides unbundled local transport to TCG, MFS, and CCT pursuant to its special access tariff. *Id.*, Schedule 1, at 9-10; *Id.*, Ex. 2.2, Schedule 2, at 5. In addition, Ameritech explains that it makes unbundled local transport available to other carriers via the MFN provisions of its interconnection agreements with those carriers. *Id.*, Schedule 1, at 9-10; *Id.*, Schedule 2, at 5. Ameritech contends that purchases of such elements cannot be separated from purchases of the same elements by the same carriers for other purposes, such as the provision of interstate access service under the FCC's expanded interconnection rules. *Id.*, at 5. Over time carriers will obtain local transport under their interconnection agreements.

Commission Conclusion

Ameritech is required by the 1996 Act and the FCC's regulations to provide unbundled local transport to requesting carriers. Unbundling of local transport/interoffice transmission facilities is required under Section 251(c)(3), and it is a separate "competitive checklist" item under Section 271. The FCC concluded that "incumbent LECs must provide interoffice transmission facilities on an unbundled basis to requesting carriers." First Report and Order, ¶ 439.

The FCC in its regulations has defined interoffice transmission facilities as follows:

[I]ncumbent LEC transmission facilities dedicated to a particular customer or carrier, or shared by more than one customer or carrier, that provide telecommunications service between wire centers owned by incumbent LECs or requesting telecommunications carriers, or between switches owned by incumbent LECs or requesting telecommunications carriers. 47 C.F.R. § 51.319(d).

Ameritech is further required to provide, in addition to exclusive use of dedicated interoffice transmission facilities, "use of the features, functions and capabilities of interoffice transmission facilities shared by more than one customer or carrier" and to provide "all technically feasible transmission facilities, features, functions and capabilities that the requesting telecommunications carrier could use to provide telecommunications services." 47 C.F.R. § 51.319(d)(2).

As is the case with all network elements, the FCC's regulations provide that an incumbent LEC "shall not impose limitations, restrictions, or requirements on requests for, or the use of, unbundled network elements that would impair the ability of a requesting telecommunications carrier to offer a telecommunications service in the manner the requesting telecommunications carrier intends." 47 C.F.R. § 51.309(a). Ameritech further must provide nondiscriminatory access so that the quality of CLEC access to that element is at least equal to that which Ameritech provides itself. 47 C.F.R. § 51.311(b).

We find that Ameritech's position on shared transport is inconsistent with the FCC's Order and with the common understanding of shared transport. The Commission is of the opinion that shared/common transport is a network element required to be unbundled to satisfy the requirements of Section 251(c)(3). Therefore, this element of the checklist has not been met.

We must note that we disagree with Staff regarding their objection that Ameritech provides unbundled local transport to CCT through its special access tariff, and not its interconnection agreement with CCT. We agree with Ameritech regarding the availability of the unbundled local transport products contained in the AT&T Agreement, which MFS, TCG or CCT can purchase through the MFN clauses in their respective agreements. Furthermore, the prices set forth in the AT&T Agreement, along with the relevant terms and conditions, are available to CCT, MFS, and TCG through the MFN clauses in their agreements.

6. Unbundled Local Switching

Checklist item (vi) requires Ameritech Illinois to provide local switching unbundled from transport, local loop transmission, or other services. Furthermore, Section 251(c)(3) states that:

incumbent LECs have the duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of this section and section 252. An

incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service.

AT&T

In its brief, AT&T proposes that Ameritech must, in providing unbundled local transport, provide on an unbundled basis interoffice transmission facilities. AT&T notes that the FCC has defined such facilities to include those dedicated to a particular customer or carrier or shared by more than one customer or carrier. AT&T Brief at 40-41 (citing 47 C.F.R. § 51.319(d)). It is argued that Ameritech has redefined shared transport as a simple variant of dedicated transport, by requiring competing carriers to purchase dedicated transmission facilities and to arrange, in turn, to share them with other carriers. AT&T suggests that Ameritech refuses to join in such arrangements, precluding competitors from using facilities that carry Ameritech's own traffic, in violation of the nondiscrimination requirements of the Act. The FCC, AT&T contends, plainly contemplated that common transport would be a network element. AT&T Brief at 43 (citing First Report and Order, ¶ 258). AT&T states that Staff witness Jennings supports its view of common transport, and that any other reading of the law would damage competition and create inefficiencies. AT&T Brief at 44 (citing Tr. 1412-15). AT&T rejects Ameritech's proposal to provide common transport to purchasers of ULS or ULS-based platform combinations, in the form of wholesale usage or access, as necessary, reasoning that the proposal does not offer local transmission at forward-looking cost-based rates, as required by Sections 251(c)(3) and 252(d)(1). As to Ameritech's contention that the issue of whether shared transport includes common transport should be deferred to the FCC, AT&T maintains that the FCC already has made clear that it views shared transport to include common transport. Nor is there any other reason to defer the issue: the FCC has stated that state commissions are free to refine the definition of network elements. AT&T Brief at 46 (citing 47 C.F.R. § 51.317).

AT&T also argues in its brief that Ameritech prohibits purchasers of ULS from using ULS to provide terminating access services, including local call termination services and terminating access for 800 service calls, in violation of the FCC's and this Commission's conclusion that ULS purchasers are entitled to all exchange and exchange access revenues. AT&T Brief at 46-59 (citing First Report and Order, ¶ 363 n.772; Wholesale/Platform Order, Dockets 95-0458/95-0531, at 65). AT&T also contends that Ameritech imposes wholly improper charges on a purchasing carrier, including a "Centrex Common Block" charge and "billing development" charge — on ULS purchasers. As to the "common block" charge, AT&T argues that purchasers of ULS must pay for and receive all of the features and functions of the switch. Since the "common block" is an inherent part of the switch, there should be no additional charge for it. As to the "billing development" charge, AT&T states that such costs should be recovered in a competitively neutral manner by all users of the network, not simply by parties using the ULS service. AT&T Brief at 57-59.

CompTel

In its brief, CompTel contends that Ameritech has not yet offered a ULS element that complies with the requirements of the FCC's Interconnection Order. It argues that Ameritech's proposal would deny the ULS purchaser the ability to collect terminating access from IXCs (and from collecting both originating and terminating access in connection with 800 calls) absent the purchaser's accession to a convoluted transport arrangement, in violation of the Act, this

Commission's order in the AT&T/WorldCom case, and the FCC's rules defining unbundled network elements. CompTel Brief at 25-27. Specifically, CompTel argues, Ameritech's intends to impose its own terminating IX access charges for local switching in cases where carriers choose to terminate traffic over Ameritech's transport network — effectively denying the competing carrier the right to do so. CompTel maintains that, under Ameritech Illinois' arrangement, ULS purchasers could provide (and charge for) terminating access only where the IXC obtains transport service to the ULS via purchase of a dedicated unbundled transport facility from Ameritech. CompTel also contends, like AT&T, that Ameritech's ULS offering is flawed for failing to commit to provide customers with the information necessary to bill for terminating access.

CompTel also objects in its brief to Ameritech's proposed imposition of interexchange access charges — namely, the interstate carrier common line charge and 75% of the residual interconnection charge — in connection with the ULS platform. CompTel argues that these charges violate both Section 252(d)(1)'s requirement that unbundled network element charges be "based on cost" and this Commission's ruling in the Wholesale/Resale proceeding that Sections 251(c)(3) and 252(d)(1) preclude Ameritech from imposing access charges on purchasers of the ULS platform. CompTel notes Staff agrees with its position as to intrastate services, and urges the Commission to find that Ameritech's surcharges violate the Act.

CompTel further contends in its brief that Ameritech is refusing to provide true "shared transport," as required by Section 251(c)(3) and the FCC Interconnection Order, ¶¶ 440-43, 312. CompTel Brief at 30-36. It is argued that access to shared transport is essential because it gives ULS purchasers nondiscriminatory access to Ameritech's interoffice network and allows them to use the traffic routing instructions resident in the local switch to direct the entrant's local traffic to other end offices using the same trunk groups as Ameritech. The FCC's shared transport requirement, CompTel argues, does not mean only that Ameritech must permit a carrier purchasing dedicated transport to share that facility with other carriers, which it impliedly must do given that ILECs may not restrict the manner in which carriers use unbundled elements; it also means that Ameritech's must permit other carriers to share transmission facilities with itself. Ameritech's reading of the Act, however, does not permit competitors to take advantage of the efficiencies of its interoffice transport network; rather, it forces them to purchase dedicated transport and to construct a duplicate network. CompTel suggests that Staff concurs in this assessment. CompTel Brief at 34-36 (citing Staff Ex. 4.02 at 9-10). CompTel also argues that Ameritech's limitation on its ability to function as access provider violates the checklist requirement that local switching be provided "unbundled from transport, local loop transmission, or other services," Section 271(c)(2)(B)(vi), and that Ameritech's proposed charge for "Billing Development" violates the cost-based pricing standard for UNEs and should be recovered on a competitively neutral basis. CompTel Brief at 36-37.

MCI

In direct testimony, MCI witness Marzullo states that Ameritech does not offer "common transport" on an unbundled basis. MCI acknowledges that Ameritech offers "shared transport," but suggests that it amounts to nothing more than "dedicated transport" with a slight variation. MCI Ex. 2.0 at 12. MCI further contends that offering common transport on an unbundled basis is technically feasible, and that, while Ameritech Illinois provides common transport today as to its switched access service, it nonetheless refuses to do so with respect to unbundled transport. *Id.* at 13. MCI also testifies that Ameritech Illinois is not currently providing unbundled local switching